

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

January 11, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 06HD-002

HAWAII

Acquisition of Private Lands and Set-Aside to Division of
Forestry and Wildlife (DOFAW) for addition to the Upper
Waiakea Forest Reserve at Waiakea, South Hilo, Hawaii,
Tax Map Key: (3) 2-4-008:003.

APPLICANT AGENCY:

Division of Forestry and Wildlife, Department of Land and Natural
Resources.

PRIVATE LANDOWNER:

CARLSMITH BALL LLP, a limited liability law partnership LLP, with
an undivided 0.50 interest as Fee Owner, IVAN MICHAEL LUI-KWAN,
husband of Frances Patricia Lui-Kwan, with an undivided
0.49947990 interest, HAWAII COUNTY ECONOMIC OPPORTUNITY COUNSEL
[sic], a Hawaii private non-profit organization, with an
undivided 0.00011622 interest; PEARSON FOUNDATION, INC., a Hawaii
private non-profit organization, with an undivided 0.00005789
interest; BOY SCOUTS OF AMERICA, ALOHA COUNCIL, a Hawaii non-
profit organization, with an undivided 0.00005789 interest; and
the ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII, a Hawaii non-
profit corporation, with an undivided 0.00028810 interest, or
their legal successors, whose business and mailing address is
IVAN LUI-KWAN et al.

Honolulu, HI
and
CARLSMITH BALL LLP
ASB Tower
1001 Bishop Street, Suite 2200
Honolulu, HI 96813

LEGAL REFERENCE:

Sections 107-10, 171-11 171-30, and Chapter 198, Hawaii Revised
Statutes, as amended, as may be necessary.

Privately owned lands situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-4-008:003, as shown on the attached map labeled Exhibit A.

1,335.980 acres, more or less.

State Land Use District: Conservation--Protective and Resource Subzones
County of Hawaii CZO: Not zoned

Vacant and unimproved.

Purchase price is \$1.25 million, pursuant to prior Board approval on February 10, 2006, Agenda Item D-5.

The parcel will become a permanent addition to the State's Upper Waiakea Forest Reserve.

Pursuant to Section 343-5(a)(1), HRS, an environmental assessment (EA) is not required where State or county funds are being used for the acquisition of unimproved real property. As the subject lands are unimproved, an EA is not required. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

There have been three Conservation Use District Applications (CDUA) on record. The first in 1981 was approved for lot consolidation/resubdivision, and two in 1988 intended to subdivide the property were submitted but then withdrawn.

APPLICANT REQUIREMENTS:

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Applicant shall be required to:

- 1) Pay for the appraisal cost to determine the value of the properties to be acquired;
- 2) Process and obtain subdivision approval at Applicant's own cost;
- 3) Provide survey maps and descriptions for the privately owned property according to State DAGS standards and at Applicant's own cost;
- 4) Obtain a title report for the privately owned property at Applicant's own cost and subject to review and approval by the Department;
- 5) Pay for and conduct a Phase I environmental site assessment and, if this Phase I identifies the potential for hazardous materials release or the presence of hazardous materials, conduct a Phase II environmental sampling and analysis plan and perform any and all remediation, abatement and disposal as may be warranted and as satisfactory to the standards required by the Federal Environmental Protection Agency and/or the State Department of Health, all at no cost to the State and to the satisfaction of the Department.

REMARKS:

BACKGROUND: At its meeting of February 10, 2006, under Agenda Item D-5, the Board granted approval-in-principle of this acquisition, subject to terms and conditions approved by the Attorney General. The purchase price was approved to be the lower of \$1.25 million or fair market value, as determined by an independent appraiser contracted by the Department of Land and Natural Resources. An appraisal completed in December 2006 established fair market value of the subject property, including its valuable timber resource, at greater than the purchase price amount of \$1.25 million. Federal and State grants have been secured by the Applicant to fund this acquisition.

DESCRIPTION. The Carlsmith Trust Property consists of 1,335.980 acres, more or less, located between 2400 and 3800 ft. elevations on the windward slopes of Mauna Loa on the island of Hawaii. Adjacent to the Waiakea Forest Reserve to the south and west, and the Hilo Forest Reserve and private forestlands to the north and east, the parcel is part of the larger watershed area of Mauna Kea and Mauna Loa. A valuable native koa forest, which comprises about 550 acres of the Carlsmith property, has apparently never been harvested for its valuable hardwood resources. An overflight and hike through adjacent areas indicated a diverse native flora in the lowland wet forest section which remains remarkably free of invasive alien species that invade and dominate neighboring areas.

NEED FOR ACQUISITION. A variety of threatened and endangered native plant and animal species (e.g., Hawaiian hoary bat-*Lasiurus cinereus semotus*, Hawaiian hawk-*Buteo solitarius*, Hawaiian honeycreeper, 'amakihi-*Hemignathus virens*) have been

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documented in adjacent areas, indicating similar species may likely be resident on the subject property. An adjacent parcel has been re-zoned to allow for subdivision and development. If left unmanaged, the native forest on the subject property will almost certainly be invaded by alien species, eventually threatening important habitats for these native threatened and endangered species.

Therefore, it is important to bring this area under the control and management of the Division of Forestry and Wildlife (DOFAW) in order to protect this valuable native ecosystem in perpetuity. DOFAW's intention is for the State to acquire fee title for the entire property to allow its permanent addition to the State's Upper Waiakea Forest Reserve.

FUNDING SOURCES. DOFAW has secured a U.S. Fish and Wildlife Service (USFWS) Recovery Land Acquisition (RLA) grant that will provide \$870,000 towards the purchase price. The RLA grant requires a minimum 25% match of non-Federal funds. To this end, DOFAW has also secured a State of Hawaii Land Conservation Fund (LCF) grant in the amount of \$430,250, of which \$380,000 will be applied to the \$1.25 million purchase price, providing a match of approximately 30%. The LCF grant was approved by the Board on June 8, 2007 (Item C-3), and is administered by the Legacy Land Conservation Program (LLCP), pursuant to HRS Chapter 173A.

ENCUMBRANCES. There are currently two mortgages attached to the property, both of which shall be released at closing. Other encumbrances have been removed from the title report and the certificate of title to the satisfaction of the Department and the Department of the Attorney General. Other than the mortgages, the title report and Certificate of Title reveal no other imperfections.

An owner identified on the Certificate of Title as Pearson Foundation, Inc., is registered in the Department of Commerce and Consumer Affairs Business Registration Division as The Pearson Foundation of Hawaii, Inc. This inconsistency was resolved by the filing of a petition in Land Court to amend the Certificate of Title to reflect the name of the registered entity. The petition was adopted as Land Court Order 171665, dated August 13, 2007.

APPLICANT REQUIREMENTS. DOFAW provided funding for an appraisal, which was contracted by the Department, pursuant to section 171-30, HRS. The appraisal, dated January 9, 2007, and conducted by Medusky & Co., Inc., has been reviewed and accepted by the Department. A title report, prepared by Title Guaranty of Hawaii, Inc., dated July 19, 2007, and a Phase I environmental site assessment (ESA) and update for the parcel, performed by Clayton Group Services, and dated April 24, 2006 and July 13, 2007, respectively, have also been received by the Department. A survey description has been prepared by DAGS Survey Division. The update to the ESA was provided pursuant to a request by the Department. The assessments were performed in conformance with

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ASTM Practice E-1527-05 and found no evidence of recognized environmental conditions. However, since the acquisition will not close within the six month viability period from the date of the update, a new Phase I ESA will be required to meet the all appropriate inquiry standard.

AGENCY COMMENTS. Agency comments were sought regarding this acquisition. DOFAW and the Office of Hawaiian Affairs provided comments in support of the acquisition. Department of Hawaiian Homelands and the County of Hawaii Planning Office had no objections. The DLNR Office of Conservation and Coastal Lands had no comment. Comments were solicited but not received from the DLNR State Historic Preservation Division.

CONSOLIDATION OF INTERESTS. Seller Ivan Lui-Kwan intends to relieve Sellers Hawaii County Economic Opportunity Counsel [sic], The Pearson Foundation of Hawaii, Incorporated, Boy Scouts of America, Aloha Council, and the Roman Catholic Church in the State of Hawaii, of the responsibility for the hazardous materials provisions in the State's warranty deed. Therefore, prior to the conveyance to the State, Mr. Lui-Kwan plans to acquire from the aforementioned Sellers their interests and the authority to sell, convey and transfer the subject property. Mr. Lui-Kwan, along with Seller Carlsmith Ball LLP, then intends to convey the full undivided interest in the subject property to the State.

DEED LANGUAGE. Sellers have expressed concern about the hazardous materials testing provision in the State's warranty deed form. The Sellers believe that as currently worded, the language is too broad, and they are concerned about the possible financial liability into perpetuity. At the Sellers' request, along with the review and approval of the Department of the Attorney General, the Department has adopted certain amendments to the warranty deed form for this acquisition, attached hereto as Exhibit B. The amendments serve to narrow the scope of testing by limiting the authority to test to relevant government agencies.

RECOMMENDATION: That the Board:

1. Authorize the Chairperson to enter into a purchase and sale agreement under terms and conditions cited above which are by this reference incorporated herein and further subject to the following:
 - A. Review and approval by the Department of the Attorney General.
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the acquisition of the subject private lands under the terms and conditions cited above which are by this

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reference incorporated herein and further subject to the following:

- A. The terms and conditions of the amended deed document form, attached as Exhibit B, as may be further amended from time to time;
 - B. Review and approval by the Department of the Attorney General;
 - C. Receipt of a Phase I Environmental Site Assessment that satisfies the all appropriate inquiry standard;
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize DOFAW to conduct a public hearing to add approximately 1,335.980 acres at Waiakea, South Hilo, Hawaii to the Upper Waiakea or Hilo Forest Reserve, under provisions of HRS §183-11, Government Land for Forest Reserves and §183-12, Notice of Hearing.
 4. Authorize the Chairperson to set the date and time for a public hearing, and appoint a Hearing Master.
 5. Authorize the issuance of a management right-of-entry permit to DOFAW covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
 6. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the DLNR Division of Forestry and Wildlife under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney

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General; and

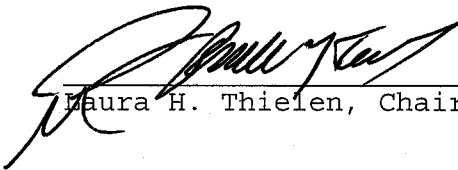
- D. Such other terms and conditions as may be prescribed
by the Chairperson to best serve the interests of the
State.

Respectfully Submitted,



Ian C. Hirokawa
Project Development Specialist

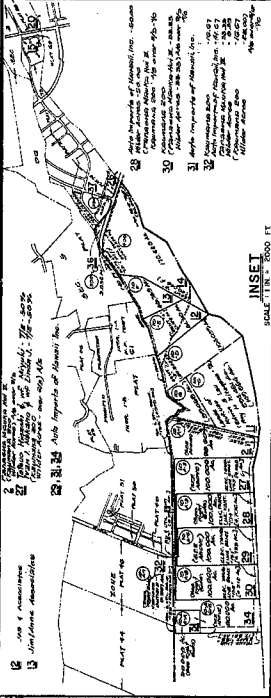
APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

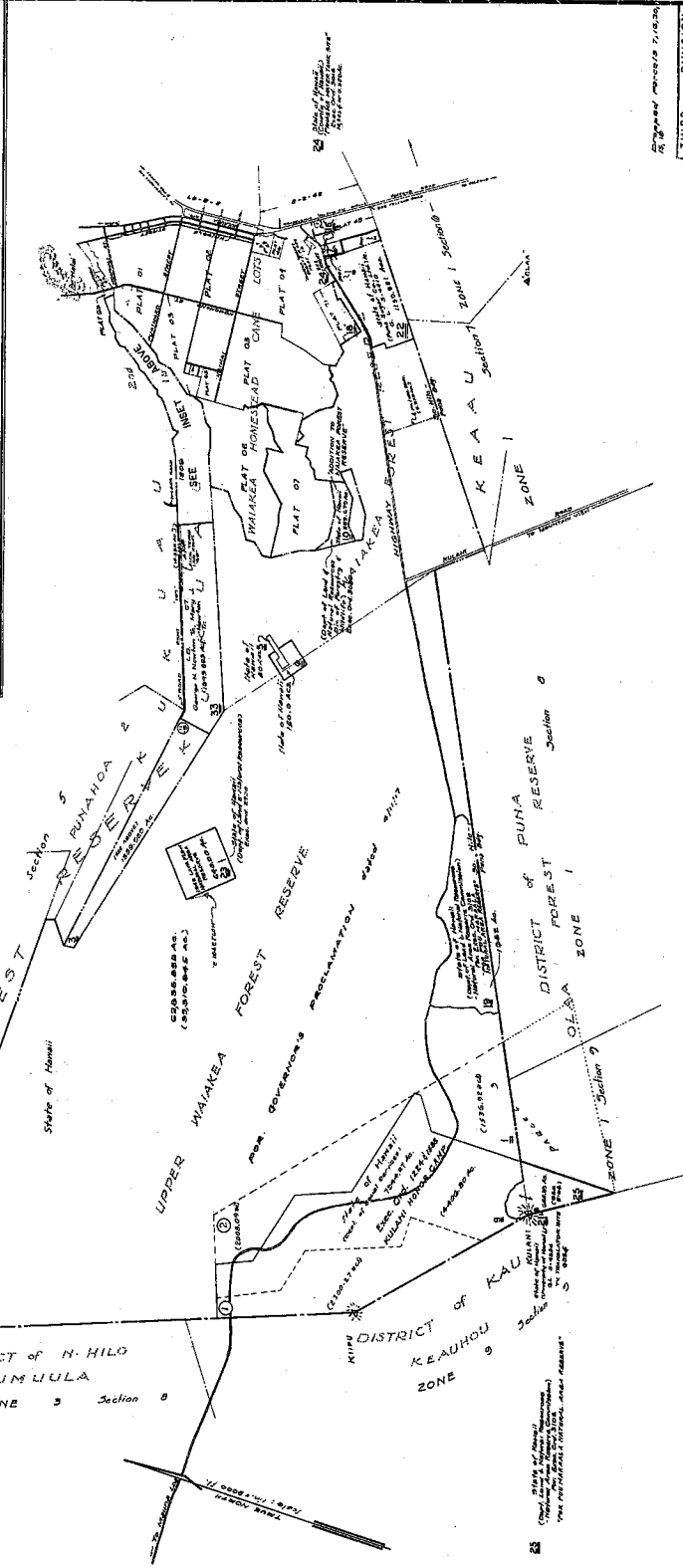


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3. The State of Hawaii is of the opinion that the following lands are public lands and should be reserved for the benefit of the people of the State of Hawaii.

NO. 1
NO. 2
NO. 3
NO. 4
NO. 5
NO. 6
NO. 7
NO. 8
NO. 9
NO. 10
NO. 11
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NO. 95
NO. 96
NO. 97
NO. 98
NO. 99
NO. 100



THIRD DIVISION	2	4	08
ZONE SEC. PLAT	2	4	08
CONTAINING PARCELS	SCALE 1" = 500 FT		

Part of PANAHEWA, UPPER WAIKAE & WAIKAE RES. HILO, HAWAII.

EXHIBIT "A"

Map No. 2217
Source: U.S. Army Corps of Engineers
U.S. Army Corps of Engineers
U.S. Army Corps of Engineers

[illegible]

REGULAR SYSTEM

To:

LOD No.

WARRANTY DEED

THAT, effective as of the ____ day of _____,
 20_____, _____,
 whose address is _____

AND NO/100 DOLLARS

, designated as "

EXHIBIT "B"

prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, designated as C.S.F. No. _____ and dated _____.

AND the reversions, remainders, rents, income and profits thereof, and all of the estate, right, title, and interest of the Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or in anywise appertaining or held and enjoyed therewith in fee simple unto said Grantee, the Grantee's successors and assigns, forever, free and clear of all liens and encumbrances (./, *except as noted herein.)

The Grantor, for itself, its successors and assigns, does hereby covenant with the Grantee, its successors and assigns, that the Grantor is lawfully seised in fee simple and possessed of the above-described land and premises, that it has a good and lawful right to convey the same as aforesaid, that the same is free and clear of all liens and encumbrances, (*except as noted herein,) and that it will and its successors and assigns, shall WARRANT AND DEFEND the same unto the Grantee, its successors and assigns, forever, against the claims and demands of all persons whomsoever.

AND, the Grantor warrants that if any ~~lender or~~ governmental agency having investigatory and/or enforcement jurisdiction in accordance with established policies and/or procedures shall ever require testing to ascertain whether there has been any release of hazardous materials by Grantor on or adjacent to the Property, ~~as determined by Grantee in its sole discretion,~~ then the Grantor shall be responsible for the reasonable costs thereof. In addition, Grantor shall execute affidavits, representations and the like from time to time at Grantee's request concerning Grantor's best knowledge and belief regarding the presence of hazardous materials on the Property placed or released by Grantor.

The Grantor agrees to indemnify, defend, and hold Grantee harmless, from any damages and claims resulting from the release of hazardous materials on or about the Property occurring while Grantor was in possession of the Property, or elsewhere if caused by Grantor or persons acting through or under Grantor.

For the purpose of this deed "hazardous material" shall mean any pollutant, contaminant, toxic substance, hazardous

waste, hazardous material, hazardous substance, or oil, as all of the above are defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, Chapter 128D, Hawaii Revised Statutes, or any other federal, state, or local law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

AND, Grantor shall conduct a Phase I environmental site assessment no later than thirty days before the effective date of this deed, and then conduct any and all abatement and disposal, as warranted by that Phase I environmental site assessment, all as satisfactory to the standards required by the Federal Environmental Protection Agency, and the Department of Health, as determined by Grantee in its sole discretion. _____

IN WITNESS WHEREOF, _____,
the Grantor herein, has caused these presents to be executed this
_____ day of _____, 20____, and the STATE OF
HAWAII, by its Board of Land and Natural Resources, the Grantee
herein, has caused the seal of the Department of Land and Natural
Resources to be hereunto affixed and these presents to be
executed this _____ day of _____, 20____, both effective
as of the day, month, and year first above written.

(NAME OF GRANTOR)

Approved by the Board of
Land and Natural Resources
at its meeting(s) held on
_____.

By _____
Its

And By _____
Its

GRANTOR

APPROVED AS TO LEGALITY
FORM, EXCEPTIONS, AND
RESERVATIONS:

STATE OF HAWAII

Deputy Attorney General

Dated: _____

By _____
Chairperson
Board of Land and
Natural Resources

GRANTEE

*Include only if there are encumbrances

)

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)

Notary Public, State of Hawaii

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)

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Notary Public, State of Hawaii

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STATE OF HAWAII)
) SS.
COUNTY OF)

On this _____ day of _____, 20____,
before me personally appeared _____
and _____, to me personally known,
who, being by me duly sworn or affirmed, did say that such
person(s) executed the foregoing instrument as the free act and
deed of such person(s), and if applicable in the capacity shown,
having been duly authorized to execute such instrument in such
capacity.

Notary Public, State of Hawaii

My commission expires: _____

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into on this _____ day of _____, 200_, by and among **CARLSMITH BALL LLP, A LIMITED LIABILITY LAW PARTNERSHIP LLP**, a Hawaii limited liability partnership, whose address is ASB Tower, Suite 2200, 1001 Bishop Street, Honolulu, Hawaii 96813, **IVAN MICHAEL LUI-KWAN**, husband of Frances Patricia Lui-Kwan, whose address is c/o Starn O'Toole Marcus & Fisher, 733 Bishop Street, Suite 1900, Honolulu, Hawaii 96813 (collectively, "Seller"), and the **STATE OF HAWAII**, by its Board of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813 ("Buyer").

R E C I T A L S:

A. Prior to the Close of Escrow, Seller will be the fee simple owner of that certain unimproved parcel of land located at Kukuau 1st, District of South Hilo, Island and County of Hawaii, State of Hawaii, consisting of 1,335.98 acres, more or less, (Tax Map Key No.: (3) 2-4-008-003), more particularly described in Exhibit A, attached hereto and incorporated herein by this reference, together with Seller's interest in all improvements, fixtures, timber, water, oil, gas and mineral and metallic mines of every kind or description, if any, and all rights appurtenant to the Property, including but not limited to timber rights, water rights, grazing rights, access rights and geothermal rights, if any (collectively, the "Property").

B. Buyer wishes to purchase the Property from Seller and Seller wishes to sell the Property to Buyer on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises, mutual agreements, representations, warranties, covenants, conditions and obligations herein set forth, the parties hereby agree as follows:

1. Purchase and Sale. Seller agrees to sell to Buyer and Buyer agrees to buy from Seller the Property on the terms and conditions set forth herein.

2. Purchase Terms

(a) Price. The purchase price for the Property shall be: (1) the sum of ONE MILLION TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (US\$1,250,000.00); or (2) the fair market value of the Property as determined by an independent appraiser contracted by the Buyer pursuant to HRS § 171-30(e), whichever is the lesser of the two amounts.

(b) Method of Payment. The purchase price shall be due and payable to Seller, in United States legal tender, at Closing (defined below).

(c) Effective Date. This Agreement shall be effective on the date that it is signed by both parties hereto and approved as to form and legality by the Attorney General (the "Effective Date").

EXHIBIT "C"

(d) Closing. The closing for this transaction ("Closing") shall take place on or before _____, 200_ (the "Closing Date"). Closing shall take place at the offices of Escrow (defined below) located at 235 Queen Street, Honolulu, Hawaii 96813, or at such other date, time or place as Seller and Buyer may agree to in writing. Seller and Buyer may mutually agree in writing to extend the Closing Date.

(e) Title Report. The parties acknowledge receipt of a Preliminary Report for the Property dated as of July 19, 2007 (the "Title Report"), prepared by Title Guaranty of Hawaii, Incorporated (the "Title Company").

3. Conditions Precedent to Closing. The parties' respective obligations to close the purchase and sale of the Property shall be conditioned upon completion of all of the following by the deadlines set forth below:

(a) Buyer's approval of the title, physical, structural, and environmental condition of the Property no later than _____, 200_ (the "Review Deadline");

(b) Prior to Closing, Buyer receives confirmation from all sources of funding that they are compatible with each other and may be used together to purchase the Property;

(c) Buyer receives, no later than _____, 200_, approval by the State of Hawaii, Board of Land and Natural Resources to enter into this Agreement and to acquire the Property, which approval is subject to the Board's sole discretion;

(d) Prior to Closing, Seller causes the mortgages on the Property, which are documented in Land Court documents 2078288 (reassigned via Land Court document 3487374), and 2078289, to be released;

(e) Prior to Closing, Buyer receives confirmation of approval and the receipt of grant funds from the U.S. Fish and Wildlife Service in the amount of Eight Hundred Seventy Thousand Dollars (\$870,000.00), and Buyer receives of authorization to expend said amount;

(f) Prior to Closing, Buyer receives confirmation of approval and the receipt of grant funds from the State of Hawaii Legacy Land Conservation Fund in the amount of no less than Three Hundred Eighty Thousand Dollars (\$380,000.00), and Buyer receives of authorization to expend said amount;

(g) Prior to Closing, Seller shall acquire one hundred percent (100%) undivided fee simple interest in the Property, and have the power to sell, transfer, and convey the Property to Buyer.

(h) Satisfaction of all obligations stated herein by both Buyer and Seller, within the time periods provided in this Agreement.

(i) If any condition precedent is not satisfied or waived in writing by the party making the waiver and agreeable to both parties, Seller or Buyer may terminate this Agreement by written notice to the other party, in which event the parties shall have no further obligation to each other under this Agreement and no damages shall be accountable to Buyer or Seller.

4. Condition of the Property.

(a) Buyer and Seller agree that, prior to the Review Deadline:

(i) Buyer shall have had the opportunity to study all aspects or circumstances of the Property which Buyer deems material or relevant;

(ii) Buyer shall have received from Seller the documents described in Exhibit B attached hereto and incorporated herein by this reference, which sets forth information related to the Property (the "Property Information");

(iii) Buyer shall have had access to the Property, at reasonable times and upon reasonable prior notice; and

(iv) Buyer shall have had the opportunity to make all inspections and verifications which Buyer deems necessary for the completion of Buyer's due diligence review for the transaction covered by this Agreement.

(b) Seller agrees to indemnify, defend, and hold Buyer harmless, from any damages and claims resulting from the release of hazardous materials on or about the Property occurring while Seller was in possession of the Property, or elsewhere if caused by Seller or persons acting through or under Seller.

For purposes of this Agreement "hazardous material" shall mean any pollutant, contaminant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, as all of the above are defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, Chapter 128D, Hawaii Revised Statutes, or any other federal, state, or local law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

(c) Except as otherwise expressly provided herein or in the Warranty Deed, as defined below, Buyer hereby acknowledges and agrees that the sale of the Property hereunder is and will be made on an "as is, where is" basis and that neither Seller, nor any attorney, representative, agent or employee of Seller has made, or will make, and except for Seller's express warranties set forth in this Agreement or in the Warranty Deed, as defined below, Seller specifically negates and disclaims, any representations, warranties, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present, future, or otherwise, of, as to, concerning or with respect to the Property.

5. Due Diligence. Buyer shall have the opportunity to investigate and review the Title Report, the Property Information, and the physical condition of the Property, which investigation and review must be completed on or before the Review Deadline. If Buyer determines that it is dissatisfied with the condition of the Property, then Buyer may terminate this Agreement by delivering written notice to Seller on or before the Closing Date. If Buyer fails to

deliver any such written termination notice to Seller on or before the Closing Date, then Buyer shall be deemed to have elected to proceed with Closing and acquire the Property.

6. Escrow. Seller has opened an escrow with Title Guaranty Escrow Services of Hawaii, Inc. ("Escrow") for the purpose of closing the purchase and sale of the Property. Escrow instructions will be approved by both Buyer and Seller. All escrow fees shall be paid for by Seller.

7. Title. Seller shall convey to Buyer fee simple title to the Property, by warranty deed (the "Warranty Deed"), the form of which shall be agreed upon by Seller and Buyer, free and clear of all monetary liens and encumbrances, except as to the encumbrances noted on Transfer Certificate of Title No. 766,508. Seller shall pay all property taxes up to the date of recordation of the Warranty Deed.

8. Title Insurance. Seller will provide a standard owner's policy of title insurance issued by the underwriter(s) of the Title Company, in the full amount of the Purchase Price, insuring that title to the Property is vested in Buyer at Closing, subject only to the exceptions noted in Section 7. The cost of such title insurance shall be paid by Seller.

9. Seller's Promise Not to Further Encumber. Seller shall not, without the prior written consent of Buyer, make or allow to be made any leases, contracts, options or agreements whatsoever affecting the Property, which would in any manner impede Seller's ability to perform hereunder and deliver title as agreed herein.

10. Seller's Representations. Seller represents and warrants that:

(a) Prior to Closing, Seller will own and have the power to sell, transfer and convey all of Seller's right, title and interest in and to the Property.

(b) To Seller's knowledge, there is no action, suit, litigation, arbitration or other proceeding pending or threatened, which in any manner affects the Property.

(c) Seller has the full power and authority to execute and deliver this Agreement and to consummate the transactions provided herein. The person signing this Agreement for Seller has full power and authority to sign for Seller and to bind it to this Agreement.

(d) Seller has no knowledge of any violations of any law, order, ordinance or regulation or policy of insurance affecting the Property.

(e) Seller has not received notice and has no knowledge of any pending or threatened condemnation of all or part of the Property.

(f) This Agreement and the other documents to be executed by Seller hereunder, upon execution and delivery thereof by Seller, will have been duly entered into by Seller, and will constitute legal, valid and binding obligations of Seller, subject to the conditions precedent set forth in Section 3. Neither this Agreement nor anything provided to be done under

this Agreement violates or shall violate any contract, document, understanding, agreement or instrument to which Seller is a party or by which it is bound.

(g) Seller has no knowledge of any unrecorded agreements affecting the Property, other than as described in Section 7.

(h) To Seller's knowledge, the Property Information contains all encumbrances, restrictions and obligations, both recorded and unrecorded, pertaining to the Property.

(i) Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code.

(j) To Seller's knowledge, the Property is not subject to any investigation by any governmental authority or any judicial or administrative proceedings alleging the material violation of or liability under any hazardous materials law, or any outstanding written order or agreement with any governmental authority or private party relating to any hazardous materials laws or hazardous materials claims.

(k) Seller agrees to disclose to Buyer all material findings in respect to the condition of the Property that Seller may later discover which findings are not contained in the Title Report delivered to Buyer.

Except as otherwise provided, Seller has not undertaken any independent investigation or inquiry to determine the existence or absence of facts.

11. Buyer's Representations. Buyer represents and warrants that, subject to approval by the Board of Land and Natural Resources, which approval is at the Board's sole discretion, and subject to approval by the Attorney General, Buyer has all the requisite power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and that the Buyer affirms that it is purchasing the Property with grants from the U.S. Fish and Wildlife Service and the State of Hawaii Land Conservation Fund.

12. Risk of Loss. All risk of loss shall remain with Seller until Closing. In the event that the Property is destroyed or damaged after the Effective Date and prior to Closing, Buyer or Seller may, at their option, elect to terminate this Agreement with no damages accountable to Buyer or Seller.

13. Closing Expenses and Fees. Seller shall pay all escrow fees. Any documentary tax or real property transfer tax arising out of the conveyance of the Property shall be borne by Seller, if applicable. Any other closing expenses, fees and charges shall be paid for by Seller.

14. Notices. All notices pertaining to this Agreement shall be in writing delivered to the parties hereto by facsimile transmission, personally by hand, courier service or Express Mail, or by first class mail, postage prepared, at the addresses set forth below. All notices shall be deemed given: (a) if sent by mail, when deposited in the mail, first class postage prepared, addressed to the party to be notified; (b) if delivered by hand, courier service or Express Mail,

when delivered; or (c) if transmitted by facsimile, when transmitted. The parties may, by notice as provided above, designate a different address to which notice shall be given.

If to Seller:

**Carlsmith Ball LLP, A Limited Liability
Law Partnership LLP**

ASB Tower, Suite 2200
1001 Bishop Street
Honolulu, Hawaii 96813
Attention: Michelle C. Imata, Esq.
Telephone: (808) 523-2500
FAX: (808) 523-0842

Ivan Michael Lui-Kwan

c/o Starn O'Toole Marcus & Fisher
733 Bishop Street, Suite 1900
Honolulu, Hawaii 96813
Telephone: (808) 537-6100

FAX: (808) 537-5434

If to Buyer:

State of Hawaii

Board of Land and Natural Resources

P. O. Box 621
Honolulu, Hawaii 96809-0621
Attention: Laura H. Thielen, Chairperson
Telephone: (808) _____
FAX: (808) _____

copies of any notices to Buyer should also be sent to:

State of Hawaii
Department of Land and Natural Resources
Land Division
1151 Punchbowl Street, Room 220
Honolulu, Hawaii 96813
Attention: Ian Hirokawa, Project Development
Specialist
Telephone: (808) 587-0420
FAX: (808) 587-0455

15. Remedies upon Default. In the event that Buyer or Seller defaults in the performance of any of their respective obligations under this Agreement, Seller or Buyer shall, in addition to any and all other remedies provided in this Agreement or by law or in equity, have the right of specific performance against the defaulting party.

16. No Broker's Commission. Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. Each party further represents that it has not and will not pay or receive a broker's commission or finders' fee for this transaction. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, the party on account of whose conduct the claim is asserted will hold the other party harmless from said claim.

17. Time of the Essence; Dates. Time is of the essence to this Agreement. In the event that any date specified in this Agreement falls on Saturday, Sunday or a public holiday, such date shall be deemed to be the succeeding day on which the public agencies and major banks are open for business.

18. Binding on Successors. Subject to approval by the Board of Land and Natural Resources which approval is at the Board's sole discretion, and approval by the Attorney General, this Agreement shall be binding not only upon the parties, but also upon their heirs, personal representatives, assigns and other successors in interest.

19. Additional Documents. Seller and Buyer agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.

20. Additional Documents to be Provided by Seller to Buyer. Seller agrees to provide the following documents to Buyer prior to Closing:

(a) Resolutions. As applicable for Seller, resolutions authorizing the transaction contemplated by this Agreement, the execution, delivery, and performance of this Agreement, any other obligation of Seller contemplated by this Agreement, and authorizing the person who will sign this Agreement to do so on behalf of Seller.

(b) Certificate of Good Standing. As applicable for Seller, a certificate of good standing of Seller certified by the proper governmental authority in the State of Hawaii.

21. Assignment. Buyer may not assign its interests under this Agreement without the prior written consent of Seller.

22. Entire Agreement; Modification; Waiver. This Agreement constitutes the entire agreement between Buyer and Seller pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver and agreeable to both parties.

23. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement.

24. Severability. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

25. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Hawaii.

26. Survival. All representations, warranties, covenants, conditions, agreements and other obligations set forth in this Agreement shall survive Closing and the recordation of the Warranty Deed and shall not merge therein unless specifically stated otherwise in this Agreement.

[**signature page follows**]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Seller:

**CARLSMITH BALL LLP, A LIMITED
LIABILITY LAW PARTNERSHIP LLP,**

a Hawaii limited liability partnership

By: _____

Name:

Title:

IVAN MICHAEL LUI-KWAN

Buyer:

STATE OF HAWAII

By: _____

Chairperson
Board of Land and Natural Resources

APPROVED AS TO FORM:

Deputy Attorney General

EXHIBIT A

[Legal Description of Property]

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EXHIBIT B

List of Property Information

1. Preliminary Report for the Property dated as of July 19, 2007, prepared by Title Guaranty of Hawaii, Incorporated.
2. Phase I Environmental Site Assessment of the Property dated April 24, 2006, prepared by Clayton Group Services, Inc.
3. Updated Phase I Environmental Site Assessment of the Property dated July 13, 2007, prepared by Bureau Veritas North America, Inc.

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